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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,303	01/23/2001	Patrice Martinez	P 07058US00	4453

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EXAMINER

PATEL, MITAL B

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 07/17/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/744,303

Applicant(s)

MARTINEZ ET AL.

CS

Examiner

Mital B. Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: reference character 92. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 10, 11, 12, 13, 14, 15, and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. In Claim 10, the Applicant is required to clarify to what the claim is intended to be drawn to, i.e., either the demand regulator alone or the combination of the demand regulator and the mask. The Applicant sets forth the combination of the demand regulator and the mask when describing the demand regulator mounted on the mask, which is inconsistent with the preamble, that sets forth the subcombination of the demand regulator. Applicant is required to make the language of the claims consistent

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with the intent of the claims. It should also be noted that in considering the claims on the merits, the Examiner will consider the claims as drawn to the combination.

5. In Claim 16, the Applicant is required to clarify to what the claim is intended to be drawn to, i.e., either the demand regulator alone or the combination of the demand regulator and the mask. The Applicant sets forth the combination of the demand regulator and the mask when describing the mask carries the regulator, which is inconsistent with the preamble, that sets forth the subcombination of the demand regulator. Applicant is required to make the language of the claims consistent with the intent of the claims. It should also be noted that in considering the claims on the merits, the Examiner will consider the claims as drawn to the combination.

6. As set forth by claim 12, it is unclear which valve the Applicant is referring to with respect to "said valve."

7. There is a lack of antecedent basis for the following limitations:

- Claim 11, lines 4-5, "the inlet"
- Claim 12, line 1, "said valve"
- Claim 13, lines 1-2, "said means for preventing operation"
- Claim 14, lines 1-2, "said means for preventing operation"

Correction is required.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 9, 10, 11, 12, 13, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Sprague (US 3077881).

10. **As to claim 9**, Sprague teaches a demand regulator comprising communication means **18** for feeding a tube for connection to an inside of a breathing mask with a pressurized breathing gas; means **66, 67** for supplying dilution air to the breathing gas; a breath-out valve **65** opening from the tube to atmosphere; a manually actuable control member **39** having a normal position causing operation without over pressure in the tube above atmosphere and with air dilution, and an emergency position causing the tube to be fed with the breathing gas at an over pressure; and means (**See Col. 3, lines 59-75 and Col. 4, lines 33-46**) for preventing feed of over pressure gas to the tube so long as the mask is in storage.

11. **As to claim 10**, Sprague teaches a demand regulator wherein the demand regulator is mounted on the mask and means for preventing over pressure gas feed to the tube comprise a valve **46** responsive to doning of the mask on the face or to a mechanical pressure of the mask against the face.

12. **As to claim 11**, Sprague teaches a regulator wherein the communication means comprise a main valve **18** defining a control chamber **30** connected via a constriction to the admission and controlling communication between the inlet tube and the tube, and a pilot valve **50** which is actuated responsive to breathe-in suction in the tube and

cooperates with a fixed seat for communicating the control chamber with a chamber which communicates with the inlet via a constriction.

13. **As to claim 12**, Sprague teaches a regulator wherein the valve is placed between the chamber and the atmosphere.

14. **As to claim 13**, Sprague teaches a regulator wherein the means for preventing operation are designed to cause high pressure feed when the manually actuatable control member is in the emergency position in response to a first intake breath causing a gas pressure in the tube to drop below ambient pressure.

15. **As to claim 14**, Sprague teaches a regulator wherein the means for preventing operation are designed to cause the regulator to be fed in response to inflation of a pneumatic harness of a mask carrying the regulator.

Allowable Subject Matter

16. Claims 15 and 16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5499624, US 4572176, US 4336590, US 4335735, US 4240419, US 4127129, and US 3768466.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 703-306-5444. The examiner can normally be reached on Monday-Friday (8:00 - 4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4520 for regular communications and 703-306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

mbp
July 13, 2003


WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700